

a computer-implemented step of addressing the feedback communication to one or more additional individuals; and

a computer-implemented step of determining word of mouth impact of the user from information associated with addressing the feedback communication to one or more additional individuals.

### **REMARKS**

Claims 1, 16, 21-23, 25, 29, 43, 45, 47-50, and 54-58 have been amended. Claim 2 has been cancelled. All other claims remain in their original form. Reconsideration of the Application is respectfully requested.

#### **I. Rejections under 35 U.S.C. § 101**

Claims 16-26, 28, and 43-58 stand rejected under 35 U.S.C. § 101 as being allegedly directed to non-statutory subject matter. For the reasons set forth below, these rejections should be removed.

Claims 16, 21, 22, 23, and 25 have been amended to make abundantly clear what was previously implicitly clear: that the steps of the method are implemented by or with the assistance of a computer or a computerized device or system. With this amendment, there can be no question that technology is called upon to carry out the steps of the method in a non-trivial way. Applicant submits that claim 16 is now in condition for allowance. Claims 17-20, 24, and 26 depend from claim 16 and are therefore allowable for the same reasons.

Claim 28 expressly requires, within the body of the claim, “a data collection mechanism.” This feature unquestionably invokes technology and makes technology integral to the claim. A device such as “a data collection mechanism” is technology by its very definition; there is simply no conceivable way to implement “a data collection mechanism” without invoking the technological arts. Applicant submits that claim 28 is in condition for allowance.

Claim 43, 45, and 47-50 have been amended to make abundantly clear what was previously implicitly clear: that the steps of the method are implemented by or with the assistance of a computer or a computerized device or system. With this amendment, there can be no question that technology is called upon to carry out the steps of the method in a non-trivial way. Applicant submits that these claims are now in condition for allowance. Claims 44 and 46 depend from claim 43 and are therefore allowable for the same reasons.

Claim 51, like claim 28 above, expressly requires, within the body of the claim, “a data collection mechanism.” As stated above with respect to claim 28, applicant submits that claim 51 is in condition for allowance. Claims 52 and 53 depend from claim 51 and are therefore allowable for the same reasons.

Claims 54, 55, and 56 have been amended to make abundantly clear, within the body of the claim, what was previously abundantly clear in the preamble: that the instructions that are stored on the “computer-readable medium” are indeed computer-readable. With this amendment, there can be no question that technology is called upon in the elements of the claim in a non-trivial way. Applicant submits that claims 54, 55, and 56 are now in condition for allowance.

Claims 57 and 58 have been amended to make abundantly clear what was previously implicitly clear: that the steps of the method are implemented by or with the assistance of a computer or a computerized device or system. With this amendment, there can be no question that technology is called upon to carry out the steps of the method in a non-trivial way. Applicant submits that these claims are now in condition for allowance.

Applicant respectfully requests that the rejections under 35 U.S.C. § 101 be withdrawn.

**II. Rejections under 35 U.S.C. § 103(a)**

**A. Claims 1, 3, 5, 7-10, 12, 14-20, 23, 25-27, 54-55, and 57 stand rejected as being allegedly obvious from the website www.zagat.com archived on December 12, 1998.**

For the reasons set forth below, these rejections should be removed.

As an initial matter, it is imperative to understand the critical distinctions between the www.zagat.com website and the present invention. First, Zagat does not direct the consumer feedback communications to the target businesses or solicit responses from the businesses. Zagat just uses the feedback communications and ratings to publish its travel guide and rank businesses according to the consumers' reviews. Second, Zagat does not automatically *generate information* from the consumer feedback. Zagat merely adds up and tabulates the consumers' responses to various questions and determines a rating or ranking for each business from this data. Essentially, the www.zagat.com website is a *survey* of consumers that enables the Zagat travel guide to be published. It is not an interactive feedback medium like Intelliseek's invention. These differences, and others that are more fully explored in the discussion of individual claims to follow, demonstrate beyond cavil that the present invention is not obvious from the www.zagat.com ratings solicitation.

**1. Claims 1, 15, 54, and 57**

Claims 1, 15, 54, and 57 have been amended to incorporate the following additional steps, which were formerly contained in claim 2:

addressing the consumer feedback communication  
to an individual associated with the business; and

transmitting the consumer feedback communication  
to the individual.

These claims, as amended, are now in condition for allowance because the cited references do not teach these steps.

The step of "addressing the consumer feedback communication to an individual associated with the business" is not taught or suggested by www.zagat.com which, as discussed above, does not even transmit the feedback communications to the subject

businesses at all. The Office action, in its discussion of claim 2 (where this element originally appeared), contends that this step is taught by Sloo. Applicant submits that this conclusion is incorrect for two reasons: (1) Sloo is not analogous art that may be combined with www.zagat.com to form the basis of an obviousness rejection; and (2) Sloo does not teach the required step.

Sloo is not analogous art that may be combined with www.zagat.com because Sloo does not describe a method for conducting a consumer survey, which is the subject of www.zagat.com. Sloo describes a computer network-implemented method for receiving consumer complaints about businesses and working with the consumer and the business to resolve the dispute. The Sloo method allows consumers to submit anonymous complaints about a particular business, and then the method contacts the business and serves as an intermediary, assisting the consumer and the business to resolve their dispute without requiring a face-to-face meeting or revelation of the complaining consumer's identity. In contrast to Zagat's method, the Sloo method is only aimed at *resolving disputes*. It does not provide a vehicle for consumers to give other types of feedback, and it does not generate feedback communications for detailed analysis or marketing research. The Sloo method facilitates resolution of individual disputes, one at a time, on an anonymous basis, while the Zagat method facilitates the continued collection of wide-ranging feedback data pertaining to various aspects of a business, to be distilled and included in published business reviews. Because Sloo is directed to a private dispute resolution method rather than a public survey for a business review publication, it is not analogous art.

Even if Sloo were analogous art to www.zagat.com, it still does not teach the critical element of the claims in question because it makes no mention of identifying a particular individual at the subject business to whom the consumer feedback communication should be addressed. Sloo describes "notify[ing] the subject that a complaint has been lodged against it," and provides that the consumer's complaint can be considered by a "judge/jury" provided by the intermediary, but none of these features teach the addressing of the consumer's complaint by the intermediary to a particular named individual at the subject company. Because this element, which is essential to

claims 1, 15, 54, and 57 (as amended), is absent from both www.zagat.com and Sloo, these claims are not obvious from the references.

For these reasons, claims 1, 15, 54, and 57 are now in condition for allowance, and Applicant respectfully requests that the rejections of record be withdrawn.

**2. Claims 3, 5, 7-10, 12, and 14**

All of these claims depend from claim 1 (now amended, as explained above) and are therefore allowable for the same reasons stated above.

**3. Claims 16, 27, and 55**

With respect to claims 16, 27, and 55, Zagat does not teach “creating one or more indices from the obtained ratings, the one or more indices *categorizing the consumer* according to the obtained ratings” (emphasis added). The Office action observes that Zagat employs indices from the obtained ratings to “rate individual restaurants and hotels” according to various criteria (e.g., food, décor, and service), but there is absolutely no teaching or suggestion in Zagat to create any indices to categorize the *consumers*. The Zagat method does collect some *demographic information* about the consumers (such as age, sex, income, educational level), but it does not categorize consumers according to the *obtained ratings* for the business being reviewed, nor does it contain any reference to *indices* for categorizing consumers. This element is completely absent from Zagat.

**4. Claims 17-19, 23, and 25-26**

All of these claims depend from claim 16 and are therefore allowable for the same reasons stated above.

Further regarding claim 18, it should be noted that, while the Office action correctly observes that Zagat teaches collection of certain demographic data such as household income from the consumers, Zagat does not teach or suggest using this demographic data or any other data to create any “indices” to be “associated with the consumer,” as required by claim 18. While the Zagat reference implies that it *presents the business ratings data* according to various consumer characteristics (such as household income), there is no indication that Zagat uses those consumer characteristics

to *categorize the consumers themselves* into different groups according to any “indices” defined by the feedback data. This is a critical distinction that must not be overlooked.

Further regarding claims 23, 25, and 26, Zagat contains no reference or suggestion to any “index associated with the consumer.” As explained above, it is true that Zagat collects some demographic data (such as household income, occupation, or frequency of purchase) from consumer/reviewers, and this demographic data can be used in the presentation the business ratings data according to the various consumer characteristics, there is no indication that Zagat uses those consumer characteristics to create any “indices” that are “associated with the consumer.”

**B. Claims 2, 28-48, 56, and 58 stand rejected as allegedly being obvious over www.zagat.com in view of U.S. Patent No. 5,895,450 (“Sloo”).**

Claim 2 has been cancelled by Applicant due to the incorporation of the elements from claim 2 into claim 1 by amendment, as discussed above. Claim 29, which depends from claim 1, has been amended to reflect the changes to claim 1.

Claims 28-28, 56, and 58 all include the step of “addressing the consumer feedback communication to an individual associated with the business.” As discussed above with respect to claim 1, which has been amended to include this step, the cited references do not teach this step. Accordingly, claims 28-48, 56, and 58 are now in condition for allowance, and Applicant respectfully requests that the rejections of record be withdrawn.

Further regarding claims 29-42 and 58, the step of “determining the word of mouth impact from information associated with addressing the feedback communication to one or more additional individuals” is not taught or suggested by www.zagat.com or Sloo. While it is correct, as the Office action notes, that surveys such as Zagat’s, which contain the collective voices of many consumers, represent “organized word of mouth,” Zagat does not make any mention of a method for *determining* the word of mouth *impact* of individual consumers.

Claims 32 and 33 further provide that “determining the word of mouth impact of the consumer comprises ascertaining a number of individuals carbon copied on the

consumer feedback communication.” The Office action contends that this step is taught by Zagat because Zagat “has the inherent ability to count the number of people sending and receiving feedback.” (Office action, p.11, ¶ 22). This, however, ignores the essential feature in claims 32 and 33 that the word of mouth be determined by “ascertaining the number of individuals *carbon copied* on the consumer feedback communication.” This “carbon copying” of other individuals on a feedback communication, where the consumer himself decides the number and identity of other individuals to be copied on the feedback communication, is completely absent from the Zagat reference, and it is a far superior indicator of the consumer/reviewer’s “word of mouth” potential than simply counting the number of users reading Zagat’s published reviews. The Sloo reference’s teaching of transmitting a complaint to a “judge/jury” does not describe the present invention’s aspect wherein the consumer/reviewer can “carbon copy” particular individuals on the feedback communication. Furthermore, as explained above, Sloo and Zagat are not analogous art because they accomplish completely different goals (individualized dispute resolution vs. solicitation of consumer reviews for publication of a travel guide).

Likewise, claims 34 and 39 includes the step of “ascertaining an average number of individuals carbon copied by the consumer on a consumer feedback communication.” For the same reasons stated above, this step is not taught by Zagat, which simply counts number of users giving and reading feedback on Zagat’s website. The same is true of claims 36 and 37 (“ascertaining a number of individuals carbon copied on the consumer feedback communication”) and claim 38 (“ascertaining a total number of individuals carbon copied for the one or more consumer feedback communications sent by the consumer”).

Claim 35 includes requires that “collecting data associated with the consumer further comprises obtaining information related to addressing the consumer feedback communication to the second set of one or more additional individuals.” Because Zagat does not include any provision for the consumer/reviewer to select additional individuals to be copied on the feedback communication, this feature is not taught by Zagat.

Further regarding claims 40, 41, and 42, the step of “determining word of mouth impact . . . using the socio-economic data” is not taught or suggested by the cited

references. As explained above, neither Zagat nor Sloo makes any mention of *determining* the word of mouth *impact* of individual consumers. While Zagat does collect socio-economic data (such as age, sex, household income, and educational level) from its users, it does not use this information to make any determination regarding which consumer/reviewers have the greatest potential for word of mouth impact on other consumers, as the present invention does.

Claims 43 and 56 comprise the same set of steps, the difference being that claim 43 is directed to a method and claim 56 is directed to a computer-readable medium with readable instructions stored thereon. As discussed above, the step of “creating an index from information associated with one or more individuals to whom the consumer feedback communications were addressed” is absent from Zagat. Zagat does not create any index that is associated with any individuals, and the consumer feedback communications in Zagat are not *addressed* to any *individuals*. It is worth emphasizing yet again that, while any Zagat user can read the survey results rating a business, the consumer feedback data is not *addressed* to any *individuals*. This is a critical difference that cannot be ignored or glossed over.

Further regarding claims 43 and 56, the Office action is incorrect when it contends that Sloo teaches the step of “addressing the consumer feedback communication to an individual associated with the business.” The cited reference to Sloo wherein the consumer complaint is “transmitt[ed] . . . to the personal e-mail address entered by the complainant” does NOT support this step at all; it is a *verification step* that e-mails the consumer complaint *back to the consumer who lodged the complaint*, as the reference makes clear:

In step 312, the program *verifies and confirms the complaint* registered in step 302. The program accomplishes this by transmitting the complaint to the *personal e-mail address entered by the complainant during registration* and *instructing the complainant to e-mail a confirmation* including any corrections back to the central computer 12. The program then compares the information in the confirmation to the information received in step 302 to verify the accuracy of the complaint.



(Sloo, col.5, ln.21-29) (emphasis added)

Claim 46 includes the further limitation that the “information associated with the one or more individuals to whom the consumer feedback communications were addressed” is information that “indicates a title or status of the one or more individuals.” Zagat does not teach this feature because, as explained above, Zagat does not teach the step of addressing consumer feedback communications to particular individuals. The Office action’s reference to Zagat’s collection of certain demographic information such as educational level is irrelevant because Zagat collects such information *from the consumer who provides the feedback data*, not from any person who wishes to read the published Zagat travel guide and business ratings.

Further regarding claim 47, the step of “ascertaining from the index whether the consumer has a potential to negatively influence other consumers” is absent from Zagat because, as explained above, Zagat does not determine the level of any consumer/reviewer’s potential impact on other consumers. Furthermore, because Zagat does not “creat[e] an index from information associated with one or more individuals to whom the consumer feedback communications were addressed” (discussed above with reference to claim 43, from which claim 47 depends), it follows *a fortiori* that Zagat does not teach the use of such an index to determine any consumer’s potential to negatively influence other consumers (or for any other purpose). For the same reasons, Zagat does not teach the added elements of claim 48.

**C. Claims 4, 13, and 24 stand rejected as being allegedly obvious from www.zagat.com in view of the book “Marketing Research in a Marketing Environment” by Dillon et al.**

Claims 4 and 13 are allowable over the cited references because they depend from claim 1, which is allowable for the reasons stated above.

Claim 24 is allowable over the cited references because it depends from claim 16, which is allowable for the reasons stated above.

**D. Claims 6 and 11 stand rejected as being allegedly obvious from www.zagat.com in view of the book “Customer Lifetime Value Analysis” by Reinhartz.**

Claims 6 and 11 are allowable over the cited references because they depend from claim 1, which is allowable for the reasons stated above.

**E. Claims 49-53 stand rejected as allegedly being obvious over www.zagat.com in view of Sloo and in further view of the book “Marketing Management” by Kottler.**

With regard to claims 49 and 50, these claims depend from claim 43, which is allowable as explained above. The step of “creating an index from information associated with one or more individuals to whom the consumer feedback communications were addressed” is an essential element of claim 43 (and, therefore, claims 49 and 50), and this step is not taught by any of the cited references.

Claim 51 requires a consumer feedback communication generator that is configured to “compose a consumer feedback communication using the obtained feedback data and having associated address information identifying one or more individuals to receive the consumer feedback communication.” As discussed and repeated several times above, neither Zagat nor any of the other cited references make any suggestion of “having associated address information identifying one or more individuals to receive the consumer feedback communication.” This aspect of the present invention, wherein the consumer/reviewer may identify specific individuals to be “carbon copied” on the feedback communication, is absent from the cited references.

Claims 52 and 53 depend from claim 51 and therefore are allowable for the reasons stated above. Additionally, with respect to claim 52, it was explained above that the cited references do not suggest any “indication of at least one of title and status of the one or more individuals” who are “carbon copied” on the feedback communication (indeed, as just restated, the cited references do not teach “carbon copying” other individuals). While Zagat does teach collection of certain demographic information indicating title and status (e.g. educational level) *from the consumer who provides the feedback data*, that

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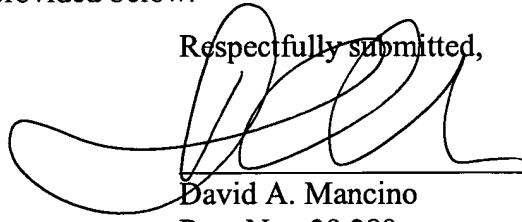
does not address claim 52's requirement that such information be analyzed for particular individuals whom the consumer/reviewer chooses to "carbon copy."

**Conclusion**

In light of the foregoing, it is respectfully submitted that claims 1-58, now pending as amended, are distinguishable from the references cited, and in condition for allowance. Reconsideration and withdrawal of the rejections of record is respectfully requested.

If the Examiner wishes to discuss any aspect of this response, please contact the undersigned at the telephone number provided below.

Respectfully submitted,



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